

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT 29 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0135-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CHARLES ALAN AMATOR,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR-12801

Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

Charles Alan Amator

Buckeye
In Propria Persona

E S P I N O S A, Judge.

¶1 Petitioner Charles Amator was convicted of first-degree murder and armed robbery following a 1987 jury trial held in his absence. He was sentenced in 1988 to life imprisonment for the murder and a consecutive, aggravated fifteen-year prison term for the armed robbery. Our supreme court affirmed his convictions and sentences on appeal, *State v. Amator*, No. CR-888-0121-AP (memorandum decision filed Sept. 26, 1989), and this

court denied relief on review of the trial court's denial of his first petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., *State v. Amator*, No. 2 CA-CR 98-0013-PR (memorandum decision filed Apr. 27, 1999). Amator subsequently filed a second petition for post-conviction relief, arguing, inter alia, that his sentences were excessive under *Blakely v. Washington*, 542 U.S. 296 (2004); the trial court summarily dismissed the petition. In a third post-conviction proceeding, Amator again asserted in his petition what appears to be a claim based on *Blakely*, arguing that the aggravated prison term for armed robbery was unlawful because it was based on facts found by a judge, and not a jury. The trial court summarily denied relief, and this petition for review followed. We review the trial court's ruling for an abuse of discretion. *State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2002). We find none here.

¶2 Although Amator does not cite *Blakely* in his pleadings, he did so inferentially below, arguing to the trial court that he is "entitled to post-conviction relief because the [aggravated] sentence was imposed in an unlawful, unconstitutional manner to the extent it was based on facts not found by a jury." In addition, the fact that Amator cited cases that address *Blakely*, such as *State v. Brown*, 212 Ariz. 225, 129 P.3d 947 (2006); *State v. Munninger*, 213 Ariz. 393, 142 P.3d 701 (App. 2006); and *Aragon v. Wilkinson*, 209 Ariz. 61, 97 P.3d 886 (App. 2004), supports this conclusion. The sole argument Amator raises on review is that the "trial court abused its discretion in deny[ing] review and relief to his claims." *Blakely* and its progeny, however, do not apply to his sentence because it was imposed, and his case was final, many years before *Blakely* was decided, see *State v. Feebles*, 210 Ariz. 589, ¶ 1, 115 P.3d 629, 631 (App. 2005), as the trial court found in

denying his second post-conviction petition. Moreover, having previously raised this claim, Amator is precluded from raising it again. *See* Ariz. R. Crim. P. 32.2(a)(2).

¶3 We thus conclude the trial court did not abuse its discretion by denying his petition on the ground that “the matters contained in the Petition for Post[-]Conviction Relief lack sufficient basis in law and fact to warrant further proceedings.” Although we grant the petition for review, we deny relief.

PHILIP G. ESPINOSA, Judge

CONCURRING:

GARYE L. VÁSQUEZ, Judge

J. WILLIAM BRAMMER, JR., Judge